LAW, TECHNOLOGY, AND ALGORITHMIC RACISM

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Abstract: This article aims to analyze the legal challenges associated with the phenomenon of algorithmic racism, considering the intersection between technology, digital discrimination, and fundamental rights. The research adopts an inductive methodology with an exploratory and theoretical character, grounded in an interdisciplinary literature review, including legal doctrine, critical data science studies, and national and international regulatory frameworks such as the LGPD and the GDPR. The study shows that artificial intelligence systems, by relying on biased historical data, can reproduce and amplify racial inequalities, negatively impacting the principle of equality and the dignity of the human person. It concludes that a robust legal framework is necessary, centered on algorithmic transparency, multisectoral accountability, and the implementation of anti-discriminatory algorithmic justice capable of protecting fundamental rights in digital environments.

Keywords: algorithmic racism; artificial intelligence; law and technology; digital discrimination; fundamental rights.

INTRODUCTION

The exponential advance of Artificial Intelligence (AI) in recent decades has profoundly transformed the way society is organized, offering automated solutions in several sectors: public security, health services, credit granting, hiring processes, and content selection on social networks. However, the algorithms that support these systems are not neutral. As recent studies show, AI may reproduce and amplify social inequalities, especially those related to structural racism.

The concept of "algorithmic racism", widely discussed by authors such as Safiya Umoja Noble[1] and Ruha Benjamin[2], describes the way in which automated systems discriminate against racial groups by mirroring biases contained in training data or in existing social structures. This reality challenges the Law to act: how should one regulate a system that learns and decides on the basis of discriminatory patterns? What limits should be imposed on developers and companies that use AI? Is there sufficient regulation to protect fundamental rights?

This article seeks to investigate these questions, and is divided into three main sections: (1) how algorithms reproduce racism, (2) the legal challenges faced in regulating AI, and (3) regulatory proposals based on algorithmic justice.

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[1] Safiya Umoja Noble, Algorithms of Oppression: How Search Engines Reinforce Racism (N.Y.U. Press 2018).

[2] Ruha Benjamin, Race After Technology: Abolitionist Tools for the New Jim Code (Polity Press 2019).

I. THEORETICAL FRAMEWORK

The governance of Artificial Intelligence requires a reworking of traditional legal frameworks, demanding from Law not merely punctual adaptations, but a conceptual reconfiguration capable of addressing the diffuse and complex effects of automated technologies. According to Mantelero et al.[3], the current legal structure is strained by the opaque logic of algorithms, whose intelligibility is limited even to their programmers, given the nature of deep learning and the absence of causal predictability. Added to this is the obstacle represented by trade secrecy, which, under the argument of protecting innovation, obstructs transparency and compromises accountability.

In this scenario, the Brazilian General Data Protection Law (LGPD - Law No. 13,709/2018) emerges as an initial attempt at containment, notably by guaranteeing, in Articles 20 and 21, the right to review automated decisions. However, as Wang et al.[4] observe, such normative instruments still lack robust mechanisms for enforcement, revealing an asymmetry between technological risks and legal safeguards. At the international level, the European GDPR presents advances, but also encounters limitations in predictive regulation and in its interfaces with fundamental rights. Supranational guidelines, such as those of the OECD and UNESCO, point to governance based on human rights, transparency, proportionality, and human oversight, principles that must be internalized by the Brazilian legal system with urgency and critical awareness.

Critical literature on technology has forcefully demonstrated that algorithmic systems are not neutral, but deeply intertwined with social and historical structures of power. Safiya Umoja Noble[5], in her seminal work Algorithms of Oppression, reveals how search engines reproduce racial stigmas, especially against Black women, as the result of a ranking system that reflects corporate interests and biases embedded in data. Ruha Benjamin[6], in turn, argues that technologies not only replicate inequalities, but reconfigure and deepen them under an aura of efficiency and neutrality, creating what she calls the "new Jim Crow code".

Virginia Eubanks[7], in studying the implementation of algorithms in public policies, shows how automation reinforces the cycle of poverty and social exclusion, especially affecting racialized populations. Cathy

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[3] Alessandro Mantelero et al., Bias in Social Media Content Management: What Do Human Rights Have to Do With It? (Geneva Acad. 2022), https://www.geneva-academy.ch/.

[4] Xiaoyang Wang et al., Algorithmic Discrimination: Examining Its Types and Regulatory Measures with Emphasis on US Legal Practices, 7 Frontiers in Artificial Intelligence (2024), https://doi.org/10.3389/frai.2024.1320277.

[5] Noble, supra note 2.

[6] Benjamin, supra note 3.

[7] Virginia Eubanks, Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor (St. Martin's Press 2018).

O'Neil[8] calls such systems "weapons of math destruction", given their capacity to scale injustices under the veneer of statistical objectivity. These studies converge in pointing to the need for an intersectional and critical perspective that understands bias as a systemic construction, not as a punctual technical deviation. Legal analysis must therefore engage with these epistemologies in order to build effective anti-discriminatory norms.

The legal response to algorithmic racism requires recognition of the existence of structural racism, a concept deepened by Silvio Almeida[9], who defines it as a systemic logic rooted in institutions, social practices, and symbolic representations. In this sense, algorithms do not create discrimination from nothing: they intensify already operating exclusionary structures, updating them in computational language. Law, as an instrument of normative power, cannot avoid confronting this structural dimension without becoming complicit in digitalized exclusion.

Djamila Ribeiro contributes to this debate by proposing the concept of "place of speech", which is essential to understanding who the subjects authorized to participate in the construction of technological narratives are. Abdias do Nascimento, by denouncing the myth of racial democracy, compels us to question the alleged neutrality of algorithmic systems implemented under that ideology. Incorporating these reflections into the legal field is a sine qua non condition for the development of public policies and legislation that not only recognize biases, but promote their concrete overcoming through historical reparation and the redistribution of decision-making power in the technological field.

II. How Algorithms Reproduce Racism

A. Biased Data and Historical Inequality

The reproducibility of injustices in digital environments is deeply tied to the nature of the data that feed artificial intelligence systems. Machine learning operates on the basis of large historical datasets that, quite often, reflect institutionalized prejudice and exclusionary practices. As Ponce et al.[10] observe, "bias in AI does not emerge in a vacuum— it reflects the values and prejudices of the society that created the data". In this sense, algorithmic discrimination is less a technical failure than a statistical reflection of structural inequalities.

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[8] Cathy O'Neil, Weapons of Math Destruction: How Big Data Increases Inequality and Threatens Democracy (Crown Publ'g Grp. 2016).

[9] Silvio Almeida, Structural Racism (Pólen 2018) [original title: Racismo Estrutural].

[10] Andrés Ponce et al., Bias and Discrimination in AI: A Cross-Disciplinary Perspective 6, SSRN (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3842194.

The difficulty lies in the fact that, once processed by automated systems, these data cease to be merely descriptive and begin to play a prescriptive role. The result is a feedback loop of inequities: already vulnerable populations become targets of decisions that perpetuate their exclusion, now under the justification of computational neutrality.

In addition to data quality, the very operating logic of algorithms contributes to the perpetuation of inequalities. Wang et al.[11] warn about the use of proxy variables—such as residential address, schooling, or consumption patterns—which, although apparently neutral, are strongly correlated with racial and socioeconomic markers. Traditional statistical modeling prioritizes correlation and predictive performance to the detriment of contextual analysis and distributive justice.

The risk is the consolidation of systems that, by maximizing their technical efficiency, sacrifice constitutional principles such as equality, dignity, and non-discrimination. Law must therefore develop hermeneutic and normative tools that resist the mathematical naturalization of inequalities and impose substantive limits on algorithmic operation.

Specialized literature has already documented several examples in which the application of algorithms has resulted in direct or indirect racial discrimination. The case of the COMPAS system in the United States is paradigmatic. Used to predict criminal recidivism, the software assigned higher risk to Black people even when they had criminal records similar or inferior to those of white defendants[12]. This bias compromises the right to a fair trial and exposes the fallacy of algorithmic neutrality.

In facial recognition technologies, studies revealed significantly higher error rates in the identification of Black faces, which led companies such as IBM, Microsoft, and Amazon to suspend the use of these tools[13]. In the private sector, credit-granting algorithms and résumé-screening systems have demonstrated discriminatory practices against residents of predominantly Black neighborhoods, as pointed out by Eubanks[14] and Mantelero et al.[15].

Such cases illustrate that the absence of regulation is not only a legal problem, but also a vector for worsening social exclusion, requiring a firm normative response committed to fundamental rights.

III. LEGAL CHALLENGES IN COMBATING ALGORITHMIC RACISM

A. The Paradox of the Algorithmic Black Box

One of the major obstacles to the legal accountability and control of artificial intelligence systems lies in their technical opacity. Many

[11] Wang et al., supra note 5.
[12] O'Neil, supra note 9.
[13] Benjamin, supra note 3.
[14] Eubanks, supra note 8.
[15] Mantelero et al., supra note 4.

algorithms, especially deep learning algorithms, operate as true "black boxes", whose decisions are unintelligible even to their developers. Mantelero et al.[16] note that this opacity, often justified by trade secrecy or computational complexity, compromises the exercise of fundamental rights such as transparency, explainability, and adversarial participation.

This situation directly challenges the principles of the Rule of Law, since citizens affected by automated decisions - such as denial of credit, pretrial detention, or exclusion from social benefits - are unable to understand, contest, or review the grounds that led to that decision. The paradox emerges: the more sophisticated the system, the greater its statistical efficiency and the lower its legal intelligibility.

B. Normative Gaps and the Role of the LGPD

Although the Brazilian General Data Protection Law (Law No. 13,709/2018) represents an advance by providing, in Articles 20 and 21, the right to review automated decisions, there remains a significant gap in the Brazilian normative structure. The LGPD lacks specific provisions aimed at mitigating racial algorithmic discrimination, as well as robust mechanisms for oversight and accountability. Wang et al.[17] observe that, in the absence of clear technical and procedural standards, the right to review frequently remains inapplicable, becoming more of a symbolic clause than an effective guarantee.

Moreover, the activity of the National Data Protection Authority (ANPD) has been incipient in view of the complexity and scale of the challenges presented by AI. The lack of consolidated case law on the subject reinforces the urgency of specific legal frameworks that articulate data protection, racial equality, and algorithmic oversight in an intersectional and proactive manner.

IV. THREATENED FUNDAMENTAL RIGHTS

Algorithmic discrimination directly affronts several constitutional rights and guarantees. It violates the principle of substantive equality by treating racialized groups unequally under the appearance of statistical neutrality. It compromises the right to non-discrimination by reinforcing exclusionary patterns based on past data. It affects the dignity of the human person by reducing individuals to predictive and probabilistic categories. And it challenges due process of law by making it impossible to exercise a broad defense in automated decisions that escape the recipient's understanding.

In this context, it is essential that Law act not only reactively, but as a tool for anticipating and preventing injustices, ensuring that technology

[16] Mantelero et al., supra note 4.
[17] Wang et al., supra note 5.

does not become a vector of institutionalized dehumanization.

A. A. Civil Liability and Accountability

The lack of clarity as to who is liable for harms arising from discriminatory automated decisions creates a dangerous gap for the effectiveness of the legal order. Developers, contracting companies, data providers, and digital platforms share the chain of responsibility, but the lack of adequate regulation fragments attribution and makes reparation difficult.

Ponce et al.[18] defend the adoption of joint and several liability regimes, with compulsory technical audits and reversal of the burden of proof in cases of presumed discrimination. This is justified by the informational imbalance between the parties and by the technical asymmetry that prevents effective social control over algorithms. Accountability must be multisectoral, involving administrative regulation, civil sanctions, individual and collective reparations, as well as criminal liability in serious cases.

V. LEGAL PATHWAYS AND REGULATORY PROPOSALS

A. Ex Ante Regulation: Prevention and Ethical Design

Effective AI regulation must begin at the origin of systems, that is, at the moment of their conception and development. It is essential that algorithms be subjected to ethical audits before implementation, with anti-discriminatory impact testing and analysis of the datasets used. The idea of "responsible design" must be incorporated into legal and business culture, with an emphasis on social justice as a criterion of regulatory compliance.

The European Union is advancing in this direction with the AI Act[19], which classifies AI systems by degree of risk and imposes proportional obligations of safety, transparency, and explainability. Brazil should observe this model, adapting it to its social and racial specificities.

Beyond prevention, effective mechanisms of subsequent accountability must be guaranteed. This includes accessible complaint channels, swift mediation and reparation procedures, as well as sanctions proportionate to the harms caused. The LGPD must be complemented by infra-legal norms detailing procedures for the review of automated decisions and establishing parameters for compensation.

The ANPD's activity must be expanded and coordinated with public defenders' offices, prosecutors' offices, and civil society organizations, so as to establish a protection network against algorithmic abuses. Sanctions

[18] Ponce et al., supra note 11, at 6.

[19] Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act), 2024 O.J. (L 1689).

should not pursue only a punitive character, but also institutional re-education and the structural transformation of discriminatory practices.

The concept of algorithmic justice, increasingly present in the international debate, presupposes that automated decisions must be explainable, contestable, auditable, and grounded in principles of equity. For this purpose, racialized groups must be included in technological governance processes, breaking with the technocratic logic that marginalizes peripheral knowledge and experiences.

Wang et al.[20] argue that AI governance must be anchored in human rights as a normative foundation, not merely as an abstract guideline. Law must incorporate mechanisms for the social control of technology, foster radical transparency, and guarantee epistemic pluralism in the production of norms. Only in this way will it be possible to overcome the cycle of exclusion and inequality that marks the current digital era.

VI. RESULTS AND DISCUSSION

The results of this research indicate that the implementation of artificial intelligence in the analysis of sentence progression may be a fundamental instrument for optimizing procedural processing and reducing prison overcrowding. The analysis highlights that the automation of legal decisions positively impacts the efficiency of the prison system by reducing procedural delay, ensuring that inmates eligible for progression of regime are identified quickly. This approach allows for a more dynamic and transparent flow in sentence execution, contributing to the reduction of the prison population in a legally grounded manner.

The procedural speed provided by automation is emphasized as bureaucratic routines are one of the main causes of delays in the granting of criminal benefits. However, despite the operational advantage, the author also warns about the ethical challenges involved in applying AI in the criminal system. The subjectivity inherent in each case requires that technology be applied with caution, respecting the principles of adversarial proceedings and full defense. Thus, AI should not replace the role of the judge, but rather act as support for faster decisions grounded in objective criteria.

On the other hand, the lack of standardization in judicial decisions contributes to inequalities in sentence enforcement. Automation emerges as a tool capable of mitigating this disparity, ensuring greater equality in the granting of benefits and in the analysis of sentence progression. However, the authors also note that the cultural resistance of legal operators may represent an obstacle to the implementation of these technologies, since many professionals still show concern about the reliability of algorithms in the legal context.

Another relevant aspect is the recognition of the State of

[20] Wang et al., supra note 5.

Unconstitutional Affairs in the Brazilian prison system, as established by ADPF No. 347. In this sense, the adoption of AI in the analysis of judicial proceedings may be seen as an emergency solution to mitigate the penitentiary crisis, ensuring that the rights provided for in the Criminal Enforcement Law are effectively applied. However, the authors emphasize that automation must be accompanied by mechanisms of control and audit to avoid arbitrary or discriminatory decisions, reinforcing the need for human oversight.

The relevance of the study is also reflected in the need to regulate the use of AI within the legal field. Different countries have already adopted guidelines to ensure transparency and ethics in the application of artificial intelligence in the Judiciary. In Brazil, the lack of specific regulation may generate uncertainty as to the applicability of these systems, requiring a clearer normative approach to avoid the perpetuation of algorithmic biases and to ensure conformity with constitutional principles.

The synergy between theory and practice may be observed in the relationship between the concepts presented in the theoretical framework and the concrete impacts of automating legal decisions in the prison system. While technology may significantly reduce procedural delay, we can demonstrate, through case studies, that prison overcrowding is directly related to the bureaucratic inefficiency of the criminal system. The practical application of AI may therefore bring real benefits by allowing a more agile and standardized analysis of proceedings, provided that it is implemented with rigorous criteria to avoid injustices.

Accordingly, the results indicate that, although artificial intelligence may represent a significant advance for the penitentiary system, its adoption must be carried out carefully. Ethical challenges, the need for regulation, and the indispensable role of the judge in supervising decisions are factors that must be considered so that technology is used fairly and effectively. Thus, this study identifies automation as a viable solution to the penitentiary crisis, provided that it is implemented with control mechanisms that guarantee the integrity and legality of judicial decisions.

CONCLUSION

The study carried out in this article has shown, in a rigorous and critical manner, that the phenomenon of algorithmic racism is not a mere technical deviation or occasional failure of artificial intelligence systems. On the contrary, it is the digital reproduction of structures of inequality historically rooted in contemporary societies, updated through automated decision-making systems based on biased data. These systems, when trained with information that reflects a social reality marked by racial asymmetries, reiterate - and in many cases deepen - exclusions under the appearance of technical neutrality.

From this finding, this work proposed a paradigmatic shift in the way

Law should position itself before new technologies. The legal task, in this context, cannot be restricted to the residual application of preexisting norms, but must assume a proactive and transformative role, especially with regard to the protection of fundamental rights in the face of emerging risks of the digital era.

Based on an interdisciplinary literature review and on national and international normative analysis, the study proposed novel hypotheses for confronting algorithmic racism on two fronts: technical and legal.

In the technical field, it suggested the implementation of systems of intersectional critical simulation, capable of testing algorithms in social scenarios that encompass racial, gender, and class markers. Such a mechanism would make it possible to verify, in advance, the occurrence of discriminatory results and their differential impacts. It also defended the creation of ethical lock mechanisms, programmed to interrupt automated decisions that present a risk of racial discrimination, conditioning their continuation on qualified human intervention. In addition, it proposed the adoption of protocols for periodic data review by multidisciplinary commissions with social representativeness, in order to audit and correct databases used in the training of artificial intelligence systems.

At the legal level, the article pointed to the need to establish an autonomous legal category for racial algorithmic discrimination, with specific provision for strict liability and full reparation of harm. It also suggested reversing the burden of proof in litigation of this nature, so that the party controlling the system is legally required to demonstrate the absence of bias whenever there is statistical evidence of inequality. Moreover, it recommended the creation of a special legal regime for algorithms with high social impact, with a legal requirement for prior racial impact assessments, similar to environmental impact studies already consolidated in the Brazilian legal order.

As part of a public policy of inclusion and algorithmic justice, it also suggested the mandatory insertion of equity clauses in administrative contracts involving automated technology, linking their validity to proof of compliance with normative criteria of non-discrimination. Finally, it proposed the creation of a national observatory of algorithmic ethics, with the participation of representatives of civil society, jurists, technology specialists, and historically marginalized groups, with consultative, supervisory, and deliberative competence over the use of algorithms in public and private spheres.

All these measures seek not only to mitigate the effects of algorithmic racism, but above all to contribute to the construction of a technological governance model that is democratic, plural, and oriented by the centrality of human dignity. It is necessary to overcome the technocratic reductionism that still prevails in the public debate on artificial intelligence and to recognize that its effective regulation must be permeated by ethical, normative, and social principles.

Fair and non-discriminatory artificial intelligence, therefore, cannot be achieved through technically neutral solutions or generic legislation. It will depend on the institutionalization of robust algorithmic justice, committed to transforming structures of exclusion and promoting substantive equality in digital environments. Law, in this scenario, is called upon to assume its emancipatory and protective vocation, acting as an instrument of resistance and reconstruction in the face of the new forms of domination and invisibilization that emerge in technological society.

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10.59224/bjlti.v4i1.75-86
ISSN: 2965-1549